IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8603 OF 2006.

Mr.Shamim Ishaque Narvel
& Others ..Petitioners

versus

Mr.Amir Siddhique Patel
@ Dada Patel & Others ..Respondents

Mr.P.S.Dani for the Petitioner

Coram : S.R.Sathe, J.
Dated : 30th July, 2007

P.C.

1. Heard the learned advocate for the petitioner. Perused the impugned order.

2. It is an admitted fact that initially the plaintiff No.3 was shown as defendant No.2 and thereafter she made an application for transposing her as plaintiff and the original plaintiffs gave no objection and accordingly defendant No.2 was impleaded as plaintiff No.3. When the suit was ready for hearing the plaintiffs 1, 2 and 4 filed an application saying that the plaintiff No.3 is not co-operating in filing affidavit in lieu of examination in chief and as such she be transposed as defendant. It is worth to note that now the

plaintiff No.3 has not come before the Court and she is not asking that she be transposed as defendant. Under the circumstances, the learned trial Judge has held that permission to transpose plaintiff No.3 as defendant cannot be granted. In my view, the order passed by the learned trial Judge is legal and correct. However, the only apprehension of the plaintiff is that if the plaintiff No.3 deposes against the interest of plaintiff Nos.1, 2 and 4, then she being co-plaintiff other plaintiffs will not be allowed to cross examine plaintiff No.3. Considering this aspect, I think that if one of the co-plaintiff deposes against the interest of the other plaintiffs or adverse to their interest, then the other co-plaintiffs namely plaintiff Nos.1, 2 and 4 are entitled to cross examine the plaintiff No.3. Hence, only with this modification the Writ petition is disposed of and it is directed that while disposing off the suit according to law the trial court should keep in mind the above observations.

(S.R.Sathe, J.)